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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RON AZARKMAN, Plaintiff and Respondent, v. NOORA NICCA, LLC., Defendant and Appellant.	B208467 (Los Angeles County Super. Ct. No. LC076556)

APPEAL from orders of the Superior Court of Los Angeles County, Michael B. Harwin, Judge. Affirmed.

Law Offices of Ehsan Afaghi, Ehsan Afaghi and Firouzeh Simab for Defendant and Appellant.

Schwartz Law Group, Matthew H. Schwartz; and Elizabeth Van Horn for Plaintiff and Respondent.

The primary question in this appeal is whether a third party may rely on a designation of agent for service of process on a limited liability company filed with the Secretary of State where, unbeknownst to him, the authority to designate the agent is the subject of a dispute between the founding members of the limited liability company We conclude that he may. We also reject appellant's argument that the default judgment should be set aside as void. We affirm the award of sanctions against appellant's attorney under Code of Civil Procedure section 128.7.[1]

FACTUAL AND PROCEDURAL SUMMARY

A. Noora Nicca

Appellant Noora Nicca, LLC was formed in April 2005 by two entities: Noora LLC (Noora) and Nicca LLC (Nicca). Noora was owned by Houshang Khodadadeh and Nicca was owned by Bhrouz Ghani.

In May 2005, appellant purchased property on Keswick Street in Van Nuys for $1.8 million. Behrouz and his wife, Adilia, obtained permission from the seller to move their business, Stone Art, Inc., into the Keswick property before the close of escrow. Escrow on the Keswick property closed on May 13, 2005.

The same day, Behrouz suffered an incapacitating stroke. On July 5, 2005, Adilia petitioned for appointment as conservator for Behrouz, supported by a declaration by his physician describing Behrouz's extensive incapacity. The court granted the petition and the next day, September 29, 2005, Adilia filed a letter of conservatorship.

Meanwhile, in late May 2005, a dispute broke out between the Noora group (collectively Noora and Houshang) and the Nicca group (collectively Nicca, Stone Art, Behrouz, and Adilia). Noora, acting on behalf of itself and purportedly for appellant, demanded that Behrouz, Adilia, and Stone Art vacate the Keswick property. They refused.

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[1] Statutory references are to the Code of Civil Procedure unless otherwise indicated.

In June 2006, the previously designated agent for service of process on appellant resigned. On September 1, 2006, at a meeting of members of appellant attended only by Noora, Noora designated itself as operating manager of appellant.[2] Houshang, as principal of Noora, was designated agent for service of process for appellant at 170 South Beverly Boulevard in Beverly Hills. The same address was designated as the principal executive offices of appellant. According to appellant, Noora was authorized to evict all tenants at the Keswick property. Appellant filed a designation of Houshang as agent for service of process with the Secretary of State on September 20, 2006.

In October 2006, appellant sued Behrouz, Adilia, and Stone Art for involuntary dissolution, breach of fiduciary duty, appointment of a receiver, trespass, an accounting, injunctive relief, breach of contract regarding the Keswick property, and breach of contract regarding property in Beverly Hills. This action was settled and dismissed in December of that year. Under the terms of the settlement, Houshang and Noora were to purchase Nicca's share in the Keswick property for $900,000. The parties executed mutual releases and the purchase was completed in April 2007. Neither the settlement agreement nor the mutual release dissolved appellant. While Houshang and Noora purchased the primary asset of appellant, the parties did not clear up the dispute regarding who was authorized to act on appellant's behalf.

In the meantime, on October 6, 2006, Adilia filed a different statement of information with the Secretary of State, designating herself as agent for service of process for appellant. The address for service of process was 1706 South Wooster Street, Los Angeles. Behrouz was named as the sole manager of the corporation.

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[2] The record does not establish whether this action was authorized by the articles of organization of appellant. We have one page of limited liability company articles of organization for appellant filed with the Secretary of State on April 1, 2005. That form document has a space labeled "management" under which a box for one manager is checked. No name for the manager is given. The form also states that additional information may be set forth on attached pages which would be incorporated by reference, but no additional pages are in our record. Neither Noora nor Nicca is identified on this document.

The dispute between Noora and Nicca escalated in January 2007 when appellant, Noora and Houshang sought to enjoin Nicca, Behrouz, Adilia, Stone Art and others from occupying the Keswick Street property. They also sought appointment of a receiver to take possession of, manage, and rent the property until it was sold.

B. Azarkman

Respondent Ron Azarkman entered into a contract with Stone Arts in March 2006 to provide and install pre-cast stone at a residence respondent was constructing. The contract was signed by an unknown person on behalf of Stone Arts.

In December 2006, respondent sued Behrouz, Adilia, Stone Art, appellant, and others, alleging causes of action for intentional misrepresentation, concealment, breach of contract, a common count, unjust enrichment, negligent misrepresentation, a declaration of constructive trust, and civil conspiracy. (LASC No. LC076556.) Respondent alleged that the defendants had so intermingled their assets and operations and failed to observe corporate formalities that each of the entity defendants should be considered the alter ego of each of the individual defendants and each of the other entity defendants. We refer to this as respondent's first action (LASC No. LC076556).

Respondent made five unsuccessful attempts between December 15 and December 19, 2006 to personally serve appellant at the Wooster address given on the designation of agent for service for process filed by Adilia. Service of respondent's first action on appellant was made by substituted service by leaving a copy of the summons and complaint with a William Clerk, the "person apparently in charge" at the Keswick Street property. A copy of the summons and complaint was mailed to appellant at the same address the following day. On March 27, 2007, a default prove up hearing was held at which respondent testified. The trial court entered a default judgment in favor of respondent for $85,000 (plus interest, attorney's fees and costs) in respondent's first action against Behrouz, Adilia, Stone Art, appellant, and others. The abstract of judgment was filed June 14, 2007.

Respondent filed a second action against Houshang, his wife Frangis Lavian Khodadadeh, and appellant (*Azarkman v. Khodadadeh et al*. (Super. Ct. L.A. County, No.

LC080717)). The gravamen of this complaint was that Noora had fraudulently conveyed the Keswick Street property to Houshang and Frangis with the intent to defraud appellant's creditors.[3]

C. Motion to Set Aside

A motion to set aside the default judgment in respondent's first action was filed by appellant on the ground that the judgment was void for lack of proper service.[4] It also argued the default and default judgments were obtained by extrinsic fraud. Appellant contended it was the victim of a fraudulent scheme by Adilia, Behrouz and Stone Art. The motion attached a copy of the statement of information filed on September 20, 2006 with the Secretary of State which designated Houshang as agent for service of process on appellant, but did not inform the court that Adilia had filed her own statement of information the following month designating herself as agent for service of process for appellant. Appellant claimed that the substituted service of respondent's first action on Adilia was not proper. It asserted that it was unaware of respondent's first action and the default judgment in respondent's favor until respondent filed his second action. Appellant also sought an award of sanctions pursuant to section 128.7.

Azarkman filed a consolidated opposition to the motions to vacate the default and sought sanctions under section 128.7. He argued that service was proper, relying on the statement of information filed by Adilia. The trial court denied appellant's motion, ruling that it had been brought under section 473 and that a sufficient showing had not been made. The court said: "I am satisfied that the plaintiff is entitled to rely on the statement of information, which is an official document with the Secretary of State." Appellant's counsel was sanctioned in the amount of $2,500. This is a timely appeal from the denial of the motion to set aside and from the order imposing sanctions.

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[3] Appellant informs us that this action is still pending in the trial court.

[4] The remaining defendants against whom Azarkman obtained a default judgment did not join in the motion and are not part of this appeal.

DISCUSSION

I

Appellant sought to set aside the default judgment as void under section 473, subdivision (d). Where the question on appeal is whether the default and default judgment were void for lack of proper service of process, we review the trial court's determination de novo. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495-496.)

Service of process on a limited liability company is governed by Corporations Code section 17061, which allows service to be made under the provisions of the Code of Civil Procedure governing service of process. (§ 413.10 et seq.)[5] In the trial court, appellant argued the default judgment was void because it was not served on Houshang, the designated agent for service of process under the statement of information filed on September 20, 2006. Appellant did not reveal the subsequent statement of information filed on October 6, 2006 designating Adilia as the agent for service of process on Noora Nicca at 1706 S. Wooster Street, Los Angeles. Under Corporations Code section 17060, subdivision (d), "[w]henever any statement [of information for a limited liability company] is filed pursuant to this section changing the name and address of the agent for service of process, *that statement supersedes any previously filed statement* pursuant to this section, the statement in the original articles of organization, . . ." (Italics added.) By operation of law, when the second statement of information was filed on October 6, it superseded the statement designating Houshang as agent for service of process.

On appeal, appellant attacks the October 6 statement of information as fraudulent. It argues that Behrouz was not competent to sign the statement because it was filed over a year after he suffered the incapacitating stroke that led to the appointment of Adilia as his conservator. Alternatively, if not signed by Behrouz, appellant claims it is a forgery, which is a nullity.

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[5] Corporations Code section 17061, subdivision (a) reads: "In addition to Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon limited liability companies . . . as provided in this section."

The internal dispute between the Nicca principals and the Noora principals concerning control over appellant is irrelevant to resolution of the issue on appeal. As we have seen, the last statement of information filed with the Secretary of State designated Adilia as agent for service of process on appellant. The question on appeal is whether Azarkman, as a third party, was entitled to rely on that information through the Secretary of State's website, to effect service of process on appellant. We conclude that he was.

In *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773 (*Pasadena Medi-Center*), the Supreme Court held that a plaintiff could validly serve a person listed in corporate documents as an officer, although the document was erroneous and the person served was not in fact an officer. The defendant corporation had not designated an agent for service of process, so counsel for plaintiff examined the Commissioner of Corporations' file on the defendant in an effort to identify the proper person to be served. (*Id*. at pp. 775-776.) Counsel for plaintiff personally served the person erroneously designated as secretary-treasurer of defendant.[6] When defendants did not respond, their default was taken.

The Supreme Court held that defendant corporation had clothed the person served with ostensible authority to accept service of process, service was proper, and there was no valid basis to set aside the default judgment. (*Pasadena Medi-Center*, *supra*, 9 Cal.3d at p. 777.) It cited Civil Code section 2317, which provides: "Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess." (*Id*. at p. 780.) Having concluded that defendant corporation had conferred ostensible authority on the person served by filing an erroneous designation of him as an officer with the Commissioner of Corporations, the court considered whether the plaintiff's reliance on the designation was reasonable. It cited Civil Code section 2334 which states: "A principal is bound by acts of his agent,

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[6] Under section 416.10, subdivision (b), a summons may be served on a corporation by delivering a copy of the summons and complaint to the president "or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer . . ., or a person authorized by the corporation to receive service of process."

under a merely ostensible authority, to those persons only *who have in good faith, and without want of ordinary care,* incurred a liability or parted with value, upon the faith thereof." (*Id*. at p. 780, italics added.) The Supreme Court concluded: "The present record demonstrates without doubt that plaintiff in fact relied upon defendant's representation, that plaintiff so relied in good faith, and that in so relying plaintiff incurred detriment." (*Ibid.*) The court reasoned: "Plaintiff's counsel could reasonably rely on a list of officers prepared by defendant corporation which bore no indicia of error or mistake. . . . To hold that plaintiff's counsel negligently relied upon the application for the stock permit would be to impose a potentially expensive and actually unfair burden upon litigants against corporate defendants." (*Ibid*.)

Here, counsel for respondent went to the website for the Secretary of State and found Adilia listed as agent of service of process for appellant. In reliance on that representation, he first attempted personal service on Adilia at the address designated on the website. When five attempts at personal service were unsuccessful, he effected substituted service on appellant by having his process server leave a copy of the summons and complaint with the person apparently in charge at appellant's place of business (Keswick Street) and by mailing a copy to appellant at that address. This complied with the procedure for substituted service under section 415.20, subdivision (a).

Appellant complains that respondent must have known that the October 2006 statement of information designating Adilia was void as a forgery because Behrouz's purported signature appears on the document long after the conservatorship was established for him due to his incapacity. As we have discussed, counsel for respondent obtained the information for service from the Secretary of State's website. The exemplar from that website included in the record on appeal identifies the limited liability company, the address, and the agent for service of process, but does not show who signed the statement of information from which the information was taken. Without deciding whether the October 6, 2006 statement of information was in fact fraudulent, we conclude that this evidence does not establish that respondent's reliance on the

identification of Adilia as the agent for service of process on appellant on the Secretary of State's website was unreasonable.

Alternatively, appellant cites a declaration by respondent stating: "I learned that Mr. Behrouz suffered either a stroke or a heart attack in about April of 2006; consequently, he was not able to (and, in fact, did not) supervise any of the work which was to be performed under the Contract." That declaration states that respondent entered into the contract with Stone Art ten days before Behrouz suffered his stroke.

Appellant makes too much of this declaration. It is unclear whether the April 2006 date referred to the date Behrouz was incapacitated, or the date the respondent learned of the incapacity. The record establishes that Behrouz was actually incapacitated on May 13, 2005, the previous year. At most, respondent's declaration establishes that he was aware that Behrouz's health prevented him from supervising the work which should have been, but allegedly was not, performed under the contract. But it provides no basis to find that respondent knew that Behrouz was the subject of a conservatorship and lacked the capacity to execute documents. In any event, as we have discussed, there is no evidence in the record that respondent knew that Behrouz's purported signature was on the document from which the Secretary of State's office gleaned the identity of the agent for service of process posted on its Web site.

Similarly, appellant's argument challenging the authority of Adilia to act for it is irrelevant.[7] It is undisputed that Adilia was conservator for Behrouz, who was owner of

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[7] We note that Corporations Code section 17304, subdivision (a) provides that if an individual member of a limited liability is adjudged by a court to be incompetent to manage the member's person or property, the member's conservator "may exercise all of the member's rights for the purpose of . . . administering the member's property, including any power the member had under the articles of organization . . . ." Since Behrouz was the only member of Nicca LLC, a member of Noora Nicca, as his conservator, Adilia assumed his authority over Nicca. At oral argument, counsel for respondent pointed out that appellant had recognized Adilia's authority to act for Behrouz, citing a real estate listing agreement for the sale of the Keswick property attached as an exhibit to appellant's petition for a preliminary injunction. That document was executed in May 2006 by Houshang and by Adilia, acting for Behrouz. In addition,

Nicca, half owner of appellant. It was the responsibility of the principals of appellant to resolve the dispute between them and to ensure that the company was either dissolved, or that the filings with the Secretary of State accurately and currently reflected firm management and authority. The settlement reached between the principals failed to achieve this resolution. It was not the responsibility of counsel for third parties to investigate any possible schism in company governance and to identify who was authorized to act for appellant. If in fact Adilia, as conservator for Behrouz, was not authorized to file a statement of information designating herself as agent for service of process, it was the responsibility of appellant to correct that representation.

II

Alternatively, appellant argues the default judgment should have been set aside under the discretionary provisions of section 473, subdivision (b) based on mistake, inadvertence, surprise or excusable neglect because it was unaware of the existence of the statement of information filed by Adilia in October 2006.

Relief under the purely discretionary provisions of section 473 depends upon the existence of "'mistake, inadvertence, surprise, or excusable neglect.' The common requirement is that the error must have been *excusable*. [Citation.] The standard is whether '"a reasonably prudent person under the same or similar circumstances" might have made the same error.' (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) In determining whether to grant relief under this provision, the court is vested with broad discretion (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233), and its factual findings are entitled to deference. (*H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368.) It has been repeatedly noted that a decision should only be held to be an abuse of discretion if it 'exceed[s] the bounds of reason.' [Citations.]" (*Solv-All v. Superior Court* (2005) 131 Cal.App.4th 1003, 1007-1008.)

Adilia signed the mutual release settling the action between appellant and Nicca, as conservator for Behrouz and in her individual capacity. Similarly, Adilia executed the memorandum of understanding settling the dispute between the Noora and Nicca parties as conservator for Behrouz.

Appellant first argues that it should be relieved from the default judgment because it was taken by surprise. It contends that since Behrouz was incapacitated, it was reasonable for appellant to believe that the statement of information designating Houshang as the agent for service of process was the latest and only statement filed with the Secretary of State. From this, appellant argues no action could be taken by Behrouz on behalf of it, including filing a superseding statement of information.

Alternatively, appellant invokes relief based on mistake, and argues: "Relief under section 473 is proper where defendant was mistaken as to some fact material to the defendant's duty to respond, by reason of which defendant failed to make a timely response. Lieberman v. Aetna Ins. Co. (1967) 249 Cal.App.2d 515, 523-524." The surprise on which appellant relies is not identified, but we assume from its previous argument that it is based on its ignorance that Adilia had been designated agent for service of process.

Appellant failed to establish that its ignorance of the second statement of information was excusable. At the time that statement was filed, Adilia, as conservator for Behrouz, had authority to act for his limited liability company, Nicca, which was one of the members of appellant. (Corp. Code, § 17304, subd. (a).)[8] The litigation between the Nicca principals and Noora principals for involuntary dissolution of appellant was pending. Thus, in October 2006, when the second statement of information was filed, both Noora and Nicca apparently had authority to act on behalf of appellant.[9] On appeal,

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[8] Nicca was a limited liability company whose only member was Behrouz. Corporations Code section 17304, subdivision (a) provides: "If a member who is an individual . . . is adjudged by a court of competent jurisdiction to be incompetent to manage the member's person or property, the member's . . . conservator, . . . may exercise all of the member's rights for the purpose of . . . administering the member's property, including any power the member had under the articles of organization . . . ."

[9] Houshang identified his company (Noora) and Nicca (owned by Behrouz) as members of Noora Nicca. The verified first amended complaint filed in the action for dissolution of Noora Nicca (which was ultimately dismissed after settlement) alleged that Noora and Nicca each owned half of the membership units of Noora Nicca. As we have

appellant ignores this dual authority and contends that only Houshang and his company, Noora, had management authority over it. This position was not reasonable under the circumstances. As the trial court found, appellant failed to satisfy the requirements for relief under section 473, subdivision (b).

III

Appellant also claims the default judgment was obtained through fraud, an alternative basis for relief. It asserts that Azarkman, in his declaration in support of the default judgment, misrepresented the date of Behrouz's incapacity in order to falsely claim that Behrouz had the capacity to execute the contract between Stone Art and respondent. Appellant cites respondent's testimony at the default prove up hearing that he dealt with Behrouz and Adilia in negotiating his contract with Stone Art. From this, appellant argues that respondent committed fraud by concealing Behrouz's incapacity at the time the contract was executed. In a related argument, appellant argues the trial court failed to exercise its equitable power to set aside the default judgment, which it contends was obtained by this fraudulent conduct by respondent.

These theories were not raised in the trial court in the motion to set aside the default judgment. Instead, in the trial court, appellant argued a theory of extrinsic fraud based on the sufficiency of evidence of alter ego liability of appellant for Stone Art's breach of contract. "'A party is not permitted to change his position and adopt a new and different theory on appeal. To permit him to do so would not only be unfair to the trial court, but manifestly unjust to the opposing litigant.'" (*DiCola v. White Brothers Performance Products, Inc.* (2008) 158 Cal.App.4th 666, 676, quoting *Ernst v. Searle* (1933) 218 Cal. 233, 240-241.) We decline to consider these new theories raised for the first time on appeal.

IV

Appellant invokes the inherent power of the court to set aside a void default judgment. It argues that respondent failed to present sufficient evidence to support the

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noted, we are unable to determine the governing authority for appellant from the record provided. (See fn. 2, *supra*.)

default judgment, because there was no allegation that Stone Art was its alter ego, that it had entered into a contract with respondent, that it had any obligation under the contract, or had received money under the contract. It invokes the "well pleaded" complaint rule, that it is error to enter a default judgment on a complaint that fails to state a cause of action against the defaulting defendant. (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 539.) But "[i]f the complaint, though defective, '"apprises the defendant of the nature of the plaintiff's demand,"' *the entry of default is merely erroneous, not void*. [Citation.]" (Italics added.) Respondent's complaint alleged that the defendants were alter egos of each other, and were liable under the Stone Art contract. This sufficiently apprised appellant of the nature of respondent's demand, and the judgment was not void.

Appellant also argues the evidence of alter ego liability presented at the default judgment was insufficient. "A motion to vacate a [default] judgment only lies where the judgment is void on its face, where it was obtained by extrinsic fraud or mistake, or where there has been no personal service of process. [Citation.] [The defendant's] claim of insufficiency of the evidence to sustain the damages award . . . does not fall within these domains." (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1749; see also *Bristol Convalescent Hospital v. Stone* (1968) 258 Cal.App.2d 848, 859 [default of defendant "admits, so far as defaulting defendant is concerned, the absolute verity of all the allegations of the complaint giving rise to liability"].)

This also disposes of appellant's related argument that the trial court failed to fulfill its responsibility as the "gatekeeper" which is based on the same claims that respondent failed to prove a valid claim against it at the default prove up.

V

Appellant argues the default judgment should have been set aside on the ground of extrinsic fraud or mistake. "After six months from entry of default, a trial court may still vacate a default on equitable grounds even if statutory relief is unavailable. [Citation.] We review a challenge to a trial court's order denying a motion to vacate a default on equitable grounds as we would a decision under section 473: for an abuse of discretion. [Citations.]" (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981.) The Supreme Court

explained the limited availability of equitable relief: "When a default judgment has been obtained, equitable relief may be given only in exceptional circumstances. '[W]hen relief under section 473 is available, there is a strong public policy in favor of granting relief and allowing the requesting party his or her day in court. Beyond this period there is a strong public policy in favor of the finality of judgments and only in exceptional circumstances should relief be granted.' [Citations.]" (*Id*. at pp. 981-982.)

A party seeking relief from default under this doctrine must articulate a satisfactory excuse for not presenting a defense to the original action. (*Rappleyea v. Campbell*, *supra*, 8 Cal.4th at p. 982.) Appellant has failed to do so because the agent designated to receive service of process for it, Adilia, was properly served with the summons and complaint. The fact that the other member of appellant, Noora, was not also served provides no excuse.

Appellant also invokes the policy that the law strongly favors trial and disposition on the merits, and therefore doubts in applying section 473 must be resolved in favor of the party seeking relief from default. For the reasons we have explained, we will not apply this public policy to relieve appellant from responding to a complaint served on the designated agent for service of process. It was appellant's obligation to resolve the schism in its management and to ensure that the documents filed with the Secretary of State reflected that resolution. Having failed to do so, it cannot shield itself from liability where respondent followed the proper procedure for service of process.

VI

Finally, appellant argues the trial court erred in imposing sanctions on its counsel under section 128.7. The trial court ruled that there was good cause for imposition of the sanctions. We review an award of sanctions for abuse of discretion. (*Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 399.)

First, appellant argues that since the trial court erred in denying the motion to set aside the default and default judgment, the motion was not brought for an improper purpose and sanctions were unwarranted. Our conclusion that the motion was properly denied for the reasons set out above resolves this argument against appellant.

Alternatively, appellant contends the trial court failed to comply with the statutory requirements for an imposition of sanctions under section 128.7 because it did not describe the conduct determined to be the basis for the sanction. Respondent sought sanctions under section 128.7, subdivision (c)(1) which provides in part: "If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion." Respondent argued he should be compensated for the fees incurred in opposing appellant's frivolous motion because appellant's motion "either resulted from inexcusable incompetence on the part of opposing counsel (for failing to check the registered agent for service of process prior to filing this motion) or has been advanced by the fraudulent omission of [appellant's] true registered agent for service of process (as otherwise conclusively proven by Plaintiff's proffer of documents certified by the California Secretary of State)."

The trial court first denied appellant's motion to set aside the default judgment and for sanctions. It then awarded respondent sanctions in the amount of $2500. We affirm the order as an award of sanctions for having to oppose a frivolous motion, and conclude that no further specification of the basis of the award was required.

DISPOSITION

The order denying appellant's motion to set aside the default judgment is affirmed. The award of sanctions against counsel for appellant is affirmed. Respondent is to have his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P.J.

We concur:

WILLHITE, J.

MANELLA, J.